

## **DECISION MEMORANDUM**

**TO:** COMMISSIONER REDFORD  
COMMISSIONER SMITH  
COMMISSIONER KEMPTON  
COMMISSION SECRETARY  
COMMISSION STAFF

**FROM:** KRISTINE SASSER  
DEPUTY ATTORNEY GENERAL

**DATE:** FEBRUARY 6, 2009

**SUBJECT:** IDAHO POWER'S REQUEST FOR ORAL ARGUMENT – COMPLAINT  
FOR BREACH OF CONTRACT, CASE NO. IPC-E-08-20

### **BACKGROUND**

On October 16, 2008, Idaho Power filed a Petition for Declaratory Order and Formal Complaint for Breach of Contract against Glenns Ferry Cogeneration Partners, LTD (Glenns Ferry). In its complaint, Idaho Power alleges that Glenns Ferry has permanently lost its host (Idaho Fresh-Pak) and Glenns Ferry's delivery of energy has been permanently curtailed. Given this "material breach" of the parties' Agreement, Idaho Power seeks a Commission Order declaring that: (1) the Agreement is terminated; and (2) the utility is entitled to liquidated damages under the Agreement of \$11.15 million. Complaint at ¶¶ 19, 23.

On October 21, 2008, a summons was issued by the Commission notifying Glenns Ferry that it had 21 days to respond to Idaho Power's complaint. Idaho Power immediately began filing discovery requests. On November 10, 2008, Glenns Ferry filed with the Commission a Motion to Dismiss for Lack of Subject Matter Jurisdiction. Subsequently, on November 14, 2008, Glenns Ferry filed a Motion to Stay Discovery.

On November 24, 2008, the parties filed a Joint Motion regarding scheduling and discovery. The parties submitted that: (1) the complex nature of the allegations, law, and Glenns Ferry's claims warrant additional time for briefing; and (2) in consideration of Glenns Ferry's Motion to Dismiss, responses to discovery should be stayed until the Commission has ruled on the issue of jurisdiction. On November 26, 2008, the Commission granted additional time for

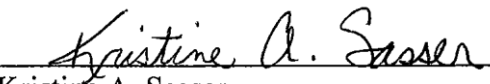
briefing and stayed answers to discovery filed by Idaho Power until such time as the Commission rules on Glenns Ferry's Motion to Dismiss. Order No. 30688.

### **REQUEST FOR ORAL ARGUMENT**

Idaho Power filed its brief in opposition to Glenns Ferry's Motion to Dismiss on January 13, 2009. The Company simultaneously filed a Request for Oral Argument on the limited issue of whether the Commission has subject matter jurisdiction over the complaint. Glenns Ferry filed a reply brief on January 26, 2009. Glenns Ferry did not oppose Idaho Power's Motion for Oral Argument.

### **COMMISSION DECISION**

Given the agreement of the parties, does the Commission wish to grant Idaho Power's request for oral argument on the limited issue of subject matter jurisdiction?

  
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Kristine A. Sasser  
Deputy Attorney General

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